

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-07-IH-5124
)	
Liberty Phones, Inc.)	NAL/Acct. No. 200732080037
)	
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: September 20, 2007

Released: September 24, 2007

By the Chief, Investigations and Hearings Division:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find that Liberty Phones, Inc. (“Liberty Phones”) apparently violated Commission orders by willfully and repeatedly failing to respond to directives of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that Liberty Phones is apparently liable for a monetary forfeiture in the amount of \$20,000.

II. BACKGROUND

2. Liberty Phones, an Arkansas-based company authorized to provide local and interexchange telecommunications services since 2002, provides prepaid residential and small business telephone service.¹ On February 6, 2006, Liberty Phones submitted to the Bureau a Certificate of Customer Proprietary Network Information (“CPNI”) filing pursuant to section 64.2009(e) of the Commission’s rules.² Upon checking, Bureau staff learned there was no record of Liberty Phones registering with the Commission or submitting Telecommunications Reporting Worksheets (FCC Form 499) to the Universal Service Administrative Company (“USAC”), or making associated payments to the requisite federal regulatory programs.³

¹ See *Application of Liberty Phones, Inc. for a Certificate of Public Convenience and Necessity to Provide Services as a Competing Local Exchange Carrier Within the State of Arkansas*, Docket No. 02-095-U, Order, 2 (Ark Comm. 2002); see also text-only cache of <http://libertyphonesinc.com/> as retrieved on December 3, 2006, 14:07 GMT.

² Letter from Rodney H. Williams, President, Liberty Phones, Inc., to Telecommunications Consumer Division, Enforcement Bureau, Federal Communications Commission, Docket 06-36, Certificate of CPNI filing for Liberty Phones, Inc. (filed February 6, 2006). Telecommunications carriers are required to submit a compliance certificate on an annual basis signed by an officer stating that, as an agent of the carrier, the officer has personal knowledge that the company has established operating procedures that adequately safeguard the use of CPNI, as provided in the Commission’s rules. See 47 C.F.R. § 64.2009(e). Telecommunications carriers also must provide a statement accompanying the certificate explaining how it is or is not in compliance with the Commission’s CPNI rules. See *id.*

³ See FCC Form 499-A (2007) (annual “Telecommunications Reporting Worksheet” or “Worksheet”); FCC Form 499-A Instructions (2007) at 1, 3-5. Telecommunications carriers must submit first a Form 499-A registration, and upon issuance of a filer identification number by USAC, must submit thereafter annual Telecommunications

(continued...)

3. On May 31, 2007, the Bureau issued a letter of inquiry (“LOI”) to Liberty Phones to obtain information concerning Liberty Phones’ compliance with various Commission filing and contribution requirements.⁴ The LOI directed Liberty Phones to respond to the Bureau’s inquiries by June 20, 2007. On June 19, 2007, staff from the office of Liberty Phones’ attorney requested an extension to submit Liberty Phones’ LOI response until June 29, 2007, citing conflicting work demands.⁵ Bureau staff granted Liberty Phones’ request for an extension to respond to the LOI.⁶ On June 26, 2007, staff from the office of Liberty Phones’ counsel requested another extension to respond to the LOI, citing again other work demands.⁷ In response, on June 28, 2007, Bureau staff denied Liberty Phones’ request for an additional blanket extension, but advising that counsel could contact Bureau staff regarding concerns with responding to any specific inquiries.⁸ On June 29, Liberty Phones did not provide any response to the LOI.

4. The Bureau sent a follow-up letter on July 17, 2007 directing Liberty Phones to provide complete responses to inquiries in the LOI by no later than July 24, 2007.⁹ The July 17, 2007 Letter also warned Liberty Phones that its failure to respond fully to the Bureau’s LOI by the due date that already passed could itself subject the company to potential enforcement action. Liberty Phones failed to respond to the July 17, 2007 Letter in any manner. Bureau staff made a final attempt on July 24, 2007 to contact Liberty Phones, through its counsel’s office, to determine the status of Liberty Phones’ LOI response. Staff in the office of Liberty Phones’ counsel told the Bureau that she had delivered the July 17, 2007 Letter to counsel but could not make any representation about when or if her office or Liberty Phones would respond to the LOI. To date, the Bureau has not received any response to the LOI.

(Continued from previous page) _____

Reporting Worksheets for the purpose of assessing various regulatory fee program payments. *See* 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604 and 64.1195. In addition, telecommunications carriers, with certain exceptions, must file quarterly Worksheets to determine monthly universal service contributions. *See* 47 C.F.R. §§ 54.706, 54.711, 54.713; FCC Form 499-Q (2007) (quarterly Worksheets). USAC is the data collection agent for FCC Form 499s. *See* FCC Form 499-A (2007) at 8; FCC Form 499-Q (2007).

⁴ Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Rodney H. Williams, President, Liberty Phones, Inc., dated May 31, 2007 (the “LOI”). Bureau staff sent the LOI to Liberty Phones’ address in North Little Rock, Arkansas by certified mail, return receipt requested and facsimile. Receipt of the letter is shown by confirmation of the facsimile transmission to the Liberty Phones facsimile number. The certified mail/return receipt hard copy was returned undeliverable.

⁵ E-mail from Jennifer Washington, Paralegal, Foster, Malish, Blair and Cowan, LLP, to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, June 19, 2007 (requesting extension to submit the LOI response until June 29, 2007).

⁶ E-mail from Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, to Jennifer Washington, Paralegal, Foster, Malish, Blair and Cowan, LLP, June 19, 2007.

⁷ E-mail from Jennifer Washington, Paralegal, Foster, Malish, Blair and Cowan, LLP, to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, June 26, 2007 (requesting further extension to submit Liberty Phones’ response to the LOI by July 6, 2007).

⁸ E-Mail from Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, to Jennifer Washington, Paralegal, Foster, Malish, Blair and Cowan, LLP, June 28, 2007 (denying Liberty Phones request for another extension and expressed willingness to consider a limited extension for specific inquiries).

⁹ Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Christopher Malish, Foster, Malish, Blair and Cowan, LLP, outside counsel for Liberty Phones, dated July 17, 2007 (“July 17, 2007 Letter”). The letter was sent by certified mail/return receipt requested, e-mail, and facsimile to Liberty Phone outside counsel. Receipt of the letter is confirmed by facsimile transmission to Liberty Phones outside counsel’s facsimile number, by the certified mail return receipts, and by transmission to the E-mail address of Ms. Jennifer Washington, Paralegal, Foster, Malish, Blair and Cowan, LLP.

5. Under section 503(b)(1) of the Communications Act of 1934, as amended (the “Act”), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹¹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act¹² and the Commission has so interpreted the term in the section 503(b) context.¹³ The Commission also may assess a forfeiture for violations that are merely repeated, and not willful.¹⁴ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁵ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁶ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.¹⁷

6. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.¹⁸ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁹

III. DISCUSSION

A. Apparent Violation

7. We find that Liberty Phones apparently violated Commission orders by willfully and repeatedly failing to respond to Bureau inquiries. Section 218 of the Act specifically authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the

¹⁰ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

¹¹ 47 U.S.C. § 312(f)(1).

¹² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹⁴ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁷ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (“*SBC Forfeiture Order*”).

¹⁸ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

¹⁹ 47 U.S.C. § 503(b)(2)(D).

Commission to perform the duties and carry out the objects for which it was created.”²⁰ Sections 4(i), 4(j), and 403 of the Act unequivocally grant the Commission the power to direct responses to inquiries in order to execute its functions.²¹ As indicated above, the Bureau directed Liberty Phones to provide certain documents and information to enable the Commission to perform its enforcement function and evaluate allegations that Liberty Phones may have violated Commission rules. There is no question that Liberty Phones received both the May 31, 2007 LOI and the July 17, 2007 Letter, as evidenced by confirmation of the facsimile transmissions, return receipts, and correspondence with staff in the office of Liberty Phones’ attorney. Indeed, Liberty Phones, through its counsel, even requested and was granted an extension of the original LOI due date from June 20 to June 29, 2007. Further, Bureau staff took the additional step of attempting to contact the office of Liberty Phones’ counsel by telephone to determine the status of Liberty Phones’ response to the LOI. Despite the Bureau’s efforts to elicit information from Liberty Phones, as of the date of this *NAL*, Liberty Phones has failed to provide any response whatsoever to the Bureau’s LOI. We therefore conclude that Liberty Phones’ continuing failure to respond to the Bureau’s LOI constitutes an apparent willful and repeated violation of Commission orders.²²

B. Proposed Forfeiture Amount

8. We propose a forfeiture in the amount of \$20,000 for Liberty Phones’ willful and repeated failure to respond to the LOI. Section 1.80 of the Commission’s rules and the Commission’s *Forfeiture Policy Statement* establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.²³ We find that Liberty Phones’ total failure to respond to the LOI, notwithstanding the Bureau’s multiple attempts to obtain the company’s response and its grant of a requested extension of time, warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission’s authority and, more importantly, threatens to compromise the Commission’s ability to adequately investigate violations of its rules. In this case, such misconduct inhibits our ability adequately to detect and deter potential rule violations in areas of critical importance to the Commission -- contributions to the federal regulatory programs. Prompt and full responses to Bureau inquiry letters are critical to the Commission’s enforcement function. We therefore propose a total forfeiture against Liberty Phones of \$20,000 for failing to respond to Commission communications. This forfeiture amount is consistent with recent

²⁰ 47 U.S.C. § 218.

²¹ 47 U.S.C. §§ 154(i),(j), & 403.

²² See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd 7589, 7599-7600, ¶¶ 23-28 (ordering \$100,000 forfeiture for egregious and intentional failure to certify the response to a Bureau inquiry); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (noting delayed response to an LOI is considered dilatory behavior which may result in future sanctions); *BigZoo.Com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437 (Enf. Bur. 2004), Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (“*BigZoo*”) (ordering \$20,000 forfeiture for failure to respond to an LOI); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072, Forfeiture Order, 19 FCC Rcd 22025 (Enf. Bur. 2004) (ordering \$3,000 forfeiture against non-commercial educational station for a partial response to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001), Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (ordering \$4,000 forfeiture for individual’s failure to respond to an LOI).

²³ 47 C.F.R. § 1.80; *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) (“*Forfeiture Policy Statement*”), *recon. denied* 15 FCC Rcd 303 (1999).

precedent in similar cases, where companies failed to provide responses to Bureau inquiries concerning compliance with the Commission's rules despite evidence that the letters of inquiry had been received.²⁴

9. We also direct Liberty Phones to respond fully to the May 31, 2007 LOI within thirty (30) days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting Liberty Phones to further penalties, including potentially higher monetary forfeitures, the revocation of operating authority, and the disqualification of any Liberty Phones principal from the provision of any common carrier services without the prior consent of the Commission.²⁵

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Liberty Phones, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for willfully and repeatedly violating Commission orders.

11. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty (30) days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE, Liberty Phones, Inc., SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment by check or money order, payable to the order of the "Federal Communications Commission," may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. The payment should note the NAL/Acct. No. reference above.

13. IT IS FURTHER ORDERED, that pursuant to sections 4(i), 4(j), 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 218 and 403, and section 54.711 of the Commission's rules, 47 C.F.R. § 54.711, Liberty Phones, Inc., shall fully respond to the May 31, 2007 and July 17, 2007 Letters of Inquiry sent by the FCC's Enforcement Bureau within thirty (30) days of the release of this order.

14. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. In addition, a copy of the response, if any, should be sent to the following E-mail address: hillary.denigro@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3)

²⁴ See, e.g., *Universal Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 Rcd 6579 (Enf. Bur. 2006) (ordering \$20,000 forfeiture for failure to respond to an LOI); *BigZoo*, 20 FCC Rcd at 3955 (same); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005) (same).

²⁵ See *CCN, Inc., et. al*, Order to Show Cause and Opportunity for Hearing, Order, 13 FCC Rcd 13599 (1998) (revoking carrier's operating authority based on findings of repeated violations); see also, e.g., *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc.*, *Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, DC 20554.²⁶

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail/return receipt requested to Christopher Malish, Foster, Malish, Blair, and Cowan, LLP, 1403 West 6th Street, Austin TX 78703.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division

²⁶ See 47 C.F.R. § 1.1914.